

On April 11, 1998, the decedent, Michael Donoho, died in an accident while working for the respondent. At the time of his death, the decedent did not have a surviving spouse or children. Tammy Collins, the mother of the decedent, alleges she was partially

dependent on decedent's earnings and pursuant to K.S.A. 1997 Supp. 44-510b(d)¹ is entitled to compensation benefits.

The Administrative Law Judge found Tammy Collins had failed to prove she was partially dependent on decedent's earnings and denied her request for compensation benefits.

On appeal Ms. Collins contends she proved she was partially dependent on decedent and requests the Appeals Board to award her appropriate compensation benefits.

Conversely, the respondent requests the Appeals Board to affirm the Administrative Law Judge's Award. Respondent argues Ms. Collins failed to prove she was partially dependent on decedent and compensation benefits should be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board finds the Administrative Law Judge's Award should be affirmed.

The Appeals Board agrees with and adopts as its own the findings and conclusions stated by the Administrative Law Judge in his Award.

One of Ms. Collins' arguments for a finding of partial dependency was that the Administrative Law Judge in the Award made a mathematical error in calculating decedent's monthly disposable income. The Administrative Law Judge found that decedent's monthly disposable income was \$320 where Ms. Collins argues that the correct amount should have been \$420.

The Appeals Board agrees that the Administrative Law Judge made an error when he calculated decedent's disposable income. But, the Appeals Board does not agree with Ms. Collins' calculations. After a review of the record, the Appeals Board finds the payroll records admitted into evidence prove that decedent earned, after taxes, a total of \$6,176.23 for 46.71 weeks for a monthly average of \$573. The record also proves that at

¹ "If an employee does not leave any dependents who were wholly dependent upon the employee's earnings at the time of the accident but leaves dependents, other than a spouse or children, in part dependent on the employee's earnings, such percentage of a sum equal to three times the employee's average yearly earnings but not exceeding \$18,500 but not less than \$2,500, as such employee's average annual contributions which the employee made to the support of such dependents during the two years preceding the date of accident, bears to the employee's average yearly earnings during the contemporaneous two-year period, shall be paid in compensation to such dependents, in weekly payments as provided in subsection (a), not to exceed \$18,500 to all such dependents."

the time of decedent's death he had monthly expenses of \$62.23 for a car loan, \$52.60 for car insurance payments and \$36.00 for a Sears credit payment for a total of \$150.83. Deducting the \$150.83 from decedent's average disposable income of \$573.00 leaves decedent with \$422.17 per month, or \$97.42 per week, instead of the \$320.00 per month, or \$73.85 per week, as found by the Administrative Law Judge. But, the Appeals Board concludes, even with the \$97.42 per week amount that is based on the earning records admitted into evidence, decedent could not have paid, as Ms. Collins alleges, \$200.00 per week to help Ms. Collins pay necessary living expenses. If decedent did give Ms. Collins part of his weekly earnings, the amount the decedent would have had left after his personal expenses, would not have been enough to offset the cost of decedent's room and board.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's October 5, 2000, Award should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
 Donald P. Herron, Kansas City, MO
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Director